

Vorys, Sater, Seymour and Pease

Arthur I. Vorys
1856-1933
Lowry F. Sater
1867-1935
Augustus T. Seymour
1873-1926
Edward L. Pease
1873-1924

Suite 1111
1828 L Street, NW
Washington, D.C. 20036

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RECORDATION NO. 10208-C Filed 1425

In Columbus:
52 East Gay Street
Post Office Box 1008
Columbus, Ohio 43216

APR 28 1981 - 1 50 PM

Telephone: (614) 464-6400
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INTERSTATE COMMERCE COMMISSION

Writer's Direct Dial Number

April 22, 1981

Ms. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Room 2215
Washington, D.C. 20423

No. 1-118A-78
APR 28 1981
Date.....
Fee \$ 10.00
Washington, D.C.

RECEIVED
APR 28 1 44 PM '81
FEE OPERATION BR.
I.C.C.

Re: Amendment of Mortgage of
Railroad Rolling Stock

Dear Ms. Mergenovich:

The undersigned hereby files an original and six counterparts of an Amendment of Mortgage of Railroad Rolling Stock and requests that the Amendment be recorded with the Commission pursuant to 49 U.S.C. 11303(a). The original mortgage was dated February 20, 1979, and recorded in compliance with the provisions of 49 U.S.C. 11303(a), on March 16, 1979, at 2:15 p.m. and assigned recordation number 10208. Amendments to the mortgage were dated January 25, 1980 and April 25, 1980, and recorded in compliance with the provisions of 49 U.S.C. 11303(a), on January 29, 1980, at 1:35 p.m. and April 30, 1980, at 2:55 p.m., respectively, and assigned recordation numbers 10208-A and 10208-B, respectively.

The names and addresses of the parties to the transaction are as follows:

South-East Coal Company
P. O. Box 332
Irvin, Kentucky 40336

South-East Coal Sales Company
88 East Broad Street
Columbus, Ohio 43215

Bank One of Columbus, NA, Agent
(formerly The City National Bank &
Trust Company of Columbus, Agent)
100 East Broad Street
Columbus, Ohio 43215

Arthur I. Vorys

Ms. Agatha L. Mergenovich
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Bank One of Columbus, NA
(formerly The City National Bank &
Trust Company of Columbus)

Citizens Fidelity Bank and Trust Company

Continental Illinois Bank and Trust
Company of Chicago


c/o Bank One of Columbus, NA, Agent
100 East Broad Street
Columbus, Ohio 43215

Included in the property covered by the aforesaid mortgage or deed of trust are rolling stock used or intended for use in connection with interstate commerce, or interests therein, owned by South-East Coal Company at the dates of said original mortgage and amendments thereto or thereafter acquired by it or its successors as owners of the water carriers or the lines of railway covered by said mortgage.

A check in the amount of \$10.00 in payment of the recordation fee is enclosed. Upon recordation, the Amendment of Mortgage of Railroad Rolling Stock and appropriate accompanying documents should be returned to:

Owen B. Katzman, Esq.
Vorys, Sater, Seymour and Pease
1828 L Street, N.W.
Suite 1111
Washington, D.C. 20036

Sincerely yours,



Owen B. Katzman

OBK/pp

fcc: J. P. Wellner, Esq.

Enclosure

Interstate Commerce Commission
Washington, D.C. 20423

4/28/81

OFFICE OF THE SECRETARY

Owen B. Katzman
Vorys, Sater, Seymour & Pease
1828 L Street, N.W.
Suite 1111
Washington, D.C. 20036

Dear **sir**:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **4/28/81** at **1:50pm**, and assigned re-recording number(s). **10208-C**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

APR 28 1981 - 1 50 PM

AMENDMENT OF MORTGAGE
OF RAILROAD ROLLING STOCK INTERSTATE COMMERCE COMMISSION

SOUTH-EAST COAL COMPANY, a corporation organized and existing under the laws of the Commonwealth of Kentucky, located at Irvine (mailing, P. O. Box 332), Kentucky 40336 ("Coal Co."), SOUTH-EAST COAL SALES COMPANY, a corporation organized and existing under the laws of the Commonwealth of Kentucky, located at 88 East Broad Street, Columbus, Ohio 43215 ("Sales Co."), BANK ONE OF COLUMBUS, NA ("BANK ONE"), a national banking association organized and existing under the laws of the United States, located at and with a mailing address of 100 East Broad Street, Columbus, Ohio 43215, CITIZENS FIDELITY BANK AND TRUST COMPANY ("CFB"), a banking company organized and existing under the laws of the Commonwealth of Kentucky, with a mailing address of P. O. Box 33000, Louisville, Kentucky 40232, CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO ("CINB"), a national banking association organized and existing under the laws of the United States, with a mailing address of 231 South LaSalle Street, Chicago, Illinois 60693, Attention: Mining Division (BANK ONE, CFB and CINB being hereinafter referred to collectively as the "Banks") and BANK ONE, not in its individual capacity but as agent for the Banks hereunder (the "Agent"), in consideration of the mutual covenants and agreements contained herein, hereby Recite and Agree as follows:

Recitals

1. Coal Co., as Mortgagor ("Mortgagor"), and Sales Co., as Guarantor ("Guarantor"), and the Banks (including CINB by subsequent amendment and assignment), as Mortgagee ("Mortgagee"), are parties to a Mortgage of Railroad Rolling Stock and Guaranty (collectively, the "Mortgage"), dated as of February 20, 1979, and recorded in compliance with the provisions of the Interstate Commerce Act, 49 U.S.C. § 11303(a), on March 16, 1979, at 2:15 P.M. and assigned recordation number 10208. Subsequent thereto, the Banks (including CINB) executed Amendments to the Mortgage dated January 25, 1980 and April 25, 1980, recorded on January 29, 1980, at 1:35 P.M. and April 30, 1980 at 2:55 P.M., respectively, and assigned recordation numbers 10208-A and 10208-B, respectively.

2. Mortgagor, Guarantor and Mortgagee (including CINB) desire to amend the Mortgage as provided herein.

Agreement

3. Section 4 of the Mortgage is hereby amended by deleting entirely such section as written and substituting therefor the following:

4. Mortgagor's Obligations

Mortgagor's obligations hereunder shall include the total unpaid amount of the Advancements, together with any and all future obliga-

tions and indebtedness under (1) the Loan Agreement, the Equipment Security Agreement and hereunder, and (2) the First Loan Agreement, Security Agreement and attendant documents thereunder, and (3) the 1980 Interim Loan Agreement between Mortgagor, Guarantor and Mortgagee dated as of December 16, 1980, as amended (the "1980 Loan Agreement") and the Security Agreement, Mortgage, Guaranty and attendant documents thereunder (such Agreements, Mortgages, Guaranties and documents being sometimes collectively hereinafter referred to as the "Attendant Agreements"), all of whatever kind and whenever created of Mortgagor or Guarantor to Mortgagee, including interest, whether or not given pursuant to commitment, direct or indirect, absolute or contingent, now existing or hereafter arising, all of which are covered by this Mortgage and are herein collectively called "the Obligations."

4. Section 7 of the Mortgage is hereby amended by deleting entirely such section as written and substituting therefor the following:

7. Repairs, Alterations, Additions, Improvements and Expenses

Mortgagor warrants that it has, will maintain the capability to, and will prior to


and during use of each Unit under Section 8 hereof, mark and maintain such marking in compliance with Schedules 1 and 2, repair such Unit as necessary to insure compliance herewith and with all applicable laws, rules and regulations to which reference is made in Section 8 hereof, and obtain and keep in force from the Louisville and Nashville Railroad an appropriate certificate reciting and evidencing such compliance.

During the effectiveness hereof, Mortgagor will make such repairs, alterations, additions and improvements as are or may be required from time to time to insure compliance herewith and with all laws, rules and regulations to which reference is made in Section 8 hereof. Without the prior written consent of Mortgagee, Mortgagor shall make no other alterations, additions or improvements to any Unit, unless such may be made without reduction of the value of that Unit below the amount which it would have been made, and without impairment to the condition and working order required hereby.

Mortgagor will keep each Unit in good repair, condition and working order and will furnish all parts, mechanisms and devices required to keep each Unit in good mechanical

and working order in compliance with the laws to which reference is made in Section 8 hereof. Mortgagee shall have no responsibility for any cost arising under this Section or for any expense arising out of or necessary for the operation and use of the Units, including but not limited to maintenance, repairs and replacement parts, storage, tolls, tariffs, fines, registration and insurance fees for all insurance required hereby.

5. Section 12 of the Mortgage is hereby amended by deleting entirely such paragraph as written and substituting therefor the following:

 In the event of damage to or loss of any of the Collateral, with respect to that Collateral and except as otherwise provided below with respect to proceeds, ~~of insurance~~, Mortgagor will place the Collateral in the repair, condition and working order required hereby or replace the same with like equipment in the repair, condition and working order which the replaced Collateral was in prior to the damage or loss. If the lost or damaged Collateral was one or more of the Units, the substituted Unit(s) will be described in a Supplemental Schedule to be delivered under the provisions of Section 9 hereof.

All proceeds of insurance payable for any such damage or loss, and any and all payments for such

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damage or loss payable to Mortgagor by any third party (for example, a railroad) or its insurer, shall be proceeds of the Collateral and shall be used only for replacement or repair of the Collateral or for prompt prepayment upon the Obligations, except that, if Mortgagor is in default hereunder, the Agent or the Banks may, and hereby are authorized by Mortgagor to, direct any party owing such payment to make the same to the Agent directly, to be applied against the Obligations in compliance herewith.

6. The Collateral is hereby added to and Schedule 1 is hereby amended and supplemented by adding thereto two 41 foot, 80 inch, 70 ton railroad hopper cars identified by serial numbers SECX 774047 and SECX 774048.

7. To secure payment and performance of the Obligations (as defined in the Mortgage, as amended hereby), Mortgagor grants to Mortgagee (including the Agent for the benefit of the Banks and to each Bank ratably in proportion to its Advancements as defined in the Mortgage, as amended hereby) a continuing security interest in the following, and if moved, sold, leased or otherwise disposed of, the proceeds thereof:

Whether now in existence or hereafter acquired, all of the following: Two 41 foot, 80 inch, 70 ton railroad hopper cars identified by serial numbers SECX 774047 and SECX 774048; together will all replacements, replacement parts, additions, repairs, repair parts, accessions and

accessories incorporated therein and/or affixed thereinto or used in connection therewith; and together with all products, replacements, additions, substitutions and proceeds (including any claims or insurance payable by reason of loss or damage to the collateral) thereof.

8. The Banks, the Agent, the Mortgagor, the Guarantor, and each of them, hereby consent to and acknowledge the foregoing Amendment, and, by the execution hereof, Mortgagor and Guarantor reaffirm to Mortgagee each and every warranty, covenant, understanding and representation contained in the Mortgage.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective duly authorized officers as of the 21st day of April, 1981, and the Amendment is effective as of December 31, 1980.

BANK ONE OF COLUMBUS, NA

By

Philip C. Parker
Philip C. Parker
Assistant Vice President

SOUTH-EAST COAL COMPANY

By

Fred E. Day
Its Treasurer

(SEAL)

A G E N T

BANK ONE OF COLUMBUS, NA

By

Philip C. Parker
Philip C. Parker
Assistant Vice President

M O R T G A G O R

SOUTH-EAST COAL SALES COMPANY

By

Thomas James
Its Treasurer

(SEAL)

G U A R A N T O R

CITIZENS FIDELITY BANK AND TRUST
COMPANY

By BANK ONE OF COLUMBUS, NA, Agent

By Philip C. Parker
Philip C. Parker
Assistant Vice President

All Parties' executions
signed and acknowledged
in the presence of:

Paul R. Fagan
William H. Hord

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO

By BANK ONE OF COLUMBUS, NA, Agent

By Philip C. Parker
Philip C. Parker
Assistant Vice President

M O R T G A G E E

STATE OF OHIO,
COUNTY OF FRANKLIN, ss:

On this 21st day of April, 19 81, before me
personally appeared Philip C. Parker,
to me personally known, who being by me duly sworn, says that he
is the Assistant Vice President of Bank One of
Columbus, NA, that said instrument was signed on behalf of said
association by authority of its Board of Directors, and he
acknowledged that the execution of the foregoing instrument was
the free act and deed of said association for the purposes
therein stated.

(SEAL)

John Patrick Wellner
Notary Public

My commission expires _____

JOHN PATRICK WELLNER
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date.
Section 147.03 R. C.

STATE OF OHIO,
COUNTY OF FRANKLIN, ss:

On this 21st day of April, 1981, before me personally appeared Fred C. Day, to me personally known, who being by me duly sworn, says that he is the Treasurer of South-East Coal Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation for the purposes therein stated.

(SEAL)

John Patrick Wellner
Notary Public

JOHN PATRICK WELLNER
NOTARY PUBLIC - STATE OF OHIO
My commission expires no expiration date
Section 147.03 R. C.

STATE OF OHIO,
COUNTY OF FRANKLIN, ss:

On this 21st day of April, 1981, before me personally appeared Thomas J. James, to me personally known, who being by me duly sworn, says that he is the Treasurer of South-East Coal Sales Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation for the purposes therein stated.

(SEAL)

John Patrick Wellner
Notary Public

JOHN PATRICK WELLNER
NOTARY PUBLIC - STATE OF OHIO
My commission expires no expiration date
Section 147.03 R. C.